

86 Ill. Adm. Code 130.2005(b)(4)(C)(ii) provides that “[s]chools are not taxable on their sales of school annuals because these are noncompetitive items.” However, sales made by an agent on behalf of an unknown or undisclosed principal will be taxable to the agent. See 86 Ill. Adm. Code 130.1915. (This is a GIL).

June 14, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 7, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY is a publisher of yearbooks for Schools, Universities, and other organizations. Our sales territory encompasses the entire United States.

In order to relieve the school of the cumbersome duties of selling, billing, and collecting for these yearbooks from its students, COMPANY offers a program called 'PROGRAM.' This program is a contract between the school and a third party, AAA, to handle these duties. A copy of a blank contract is enclosed for reference.

AAA handles all of the duties of taking the orders, billing, and collecting the funds from the students. This money, minus a PROGRAM Fee, is then remitted to COMPANY to be applied to the school's account. After the yearbooks are delivered, COMPANY then bills the school for the total number of yearbooks delivered. Any difference in the amount billed and the money collected is then owed to COMPANY by the school; or, owed to the school by COMPANY if there is a credit balance.

It appears, from the above, that the sale is between COMPANY and the school, with AAA acting on behalf of the school. This also appears to make the sale exempt from the Retailer's Occupation Tax under Illinois Department Of Revenue Regulations, Title 86, Part 130, Section 130.2005.b.4.C.ii.

COMPANY respectfully requests an Administrative Ruling in this matter. Is the sale of these yearbooks exempt from the tax to the school or not?

From the information provided, it is not clear to us who is actually selling the yearbooks to students. It appears, from the limited information in your letter, that yearbook sales are made to students by the school, with AAA merely soliciting and processing orders. COMPANY apparently makes sales of yearbooks to the school for resale and invoices reflect this set up. We hope that the following information, based upon these assumptions, will be helpful.

In general, sales of books by schools do not qualify for exemption from sales tax because such book sales are considered to be in competition with retailers. However, schools that have been issued a valid tax exemption identification number by the Illinois Department of Revenue are authorized to engage in three limited types of nontaxable selling (see 86 Ill. Adm. Code 130.2005 (a)(2, 3, and 4)), enclosed. As you noted, 86 Ill. Adm. Code 130.2005(b)(4)(C)(ii) provides that "[s]chools are not taxable on their sales of school annuals because these are noncompetitive items."

If AAA were actually selling the yearbooks as an agent of the school, our analysis would be somewhat different. This is because when agents, such as a third party organization, engage in selling, the person who is liable for Retailers' Occupation Tax (sales tax) will depend upon whether the agent is working on behalf of a disclosed or undisclosed principal. See 86 Ill. Adm. Code 130.1915, regarding Auctioneers and Agents, enclosed. An agent acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be sold and is responsible for paying Retailers' Occupation Tax on the gross receipts from the sale as well as filing a sales tax return.

However, if the agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the agent. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the agent.

If a third party organization acts on behalf of a known or disclosed principal, e.g. a school with a valid Illinois tax exemption identification number, yearbook sales may be made tax exempt. If, however, a third party organization acts on behalf of an unknown or undisclosed principal, the third party organization will be liable for Retailers' Occupation Tax and must collect Use Tax from its customers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.